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LEWIS, BRISBOIS, BISGAARD & SMITH LLP
221 NORTH FIGUEROA STREET
SUITE 1200
LOS ANGELES, CA 90012

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MAR 19 2007

In re Application of : **OFFICE OF PETITIONS**
Peter T. McCarthy :
Application No. 10/606,265 : ON PETITION
Filed: June 25, 2003 :
Attorney Docket No. 24652-61 :

This is a decision on the petition under 37 CFR 1.137(b), filed July 20, 2006, and supplemented on March 6, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of January 11, 2006, which set a shortened statutory period for reply of three (3) months. A three (3) month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. As the reply to the final Office action was not received, the application became abandoned on July 12, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the required reply in the form of reply (request for continued examination, \$395 filing fee, and submission as required by 37 CFR 1.114), (2) the petition fee of \$750, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely reply to the Office action of January 11, 2006 is accepted as being unintentionally delayed.

Since this application was abandoned for failure to timely reply to the final Office action of January 11, 2006 within the extendible six month period provided therefor, the Examiner had no procedural authority with respect to the abandoned application. See Lorenz v. Finkl, 333 F.2d 885, 891, 142 USPQ 26, 30 (CCPA 1964). Therefore, the examiner was without authority to act further in the case absent a grantable petition reviving the application. Nevertheless, in view of this decision

on petition, the subsequent action taken by the examiner, i.e., mailing of a Notice of Allowability and Notice of Allowance and Fee(s) Due, has been ratified. In view thereof, it is unnecessary to either vacate or re-mail the Notices of September 21, 2006.

As authorized in the communication received March 6, 2007, the \$500 balance due for the petition fee will be charged to petitioner's deposit account.

The issue fee has been received. Accordingly, this application is being referred to Publishing Division for further action in accordance with this decision on petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

A handwritten signature in cursive script, appearing to read "Frances Hicks", is written over the printed name.

Frances Hicks
Petitions Examiner
Office of Petitions